



16348
Attorney Docket No. BP9901-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRANSMITTAL COVER SHEET

Application Serial No: 09/593,914 Confirmation No. 8319
Date Filed: June 14, 2000
Application Title: Probes, Probe Sets, Methods And Kits Pertaining To The
Detection, Identification And/Or Enumeration Of Yeast;
Particularly In Wine
Applicants: Hyldig-Nielsen et al.
Group Art Unit: 1634
Examiner: Carla J. Myers
Action Date: July 17, 2002
Action Type: Second Office Action On Merits - NON-FINAL
Certified Mail No.: 7099 3400 0007 5728 4951

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Brian D. Gildea
Reg. No. 39,995

Commissioner for Patents
Washington, DC 20231

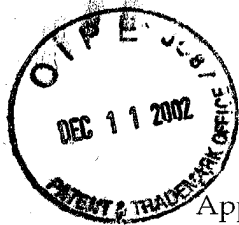
Dear Sir or Madam:

Enclosed herewith, please find the following documents and sheets.

1. Response to the Office Action mailed on July 17, 2002.
2. Petition Under 37 C.F.R. § 1.136(a) for a two-month extension of time.

Respectfully submitted
On behalf of Applicants,

Brian D. Gildea; Reg. No. 39,995



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Commissioner for Patents
Washington, DC 20231

Dear Sir or Madam:

A petition for an automatic two-month extension of time has been included with the papers accompanying this document so please consider the following response to the Office Action mailed on July 17, 2002.

I. ACTION SUMMARY

Claims 1-12, 16, 18-26, 29, 32-34, 46-49, 60-62, 72 and 80-87 stand pending in this application. The Examiner has maintained a restriction requirement with respect to claims 10, 11, 21, 22, 34, 61 and 62. Claims 46-49, 60-62, and 80-85 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 1-9, 12, 20, 23, 24, 25, 29, 32, 33, 46, 60, 72, 86

and 87 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kosse (reference DF) in view of Stender (1998; WO98/15648; reference BB). Claims 47-49 and 80-85 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kosse (reference DF) in view of Stender (1998; WO98/15648; reference BB) and in further view of Parton (US 5,905,038). Claims 1-12, 16, 18-26, 29, 32, 33, 46, 60-62, 72, 86 and 87 stand rejected under 35 U.S.C. §103(a) as being unpatentable over De Wachter (GeneBank Accession No. x58052) in view of Kosse (reference DF) in view of (1998; WO98/15648; reference BB). Claims 47-49 and 80-85 stand rejected under 35 U.S.C. §103(a) as being unpatentable over De Wachter in view of Kosse (reference DF) and Stender (1998; WO98/15548; reference BB) in view of Parton (US 5,905,038). No claim stands allowed.

II. FORMALITIES

1. Applicants acknowledge the Examiner's reiteration and FINAL decision with respect to the restriction requirement applying to claims 10, 11, 21, 22, 34, 61 and 62. In addition to the arguments that the Examiner acknowledged, it was also argued that such a restriction requirement was not proper under 35 U.S.C. 121 in view of the decisions of *In re Weber* and *In re Haas*. Accordingly, no claims have been amended or canceled for this reason and Applicants stand ready to appeal this decision. However, claims 10, 21, 34 and 61 have been amended for other reasons.
2. The Examiner has indicated that the response of January 17, 2002 did not include a page 22. Although it is unclear why page 22 was not received by The Office, a copy of old page 22 is attached hereto. Moreover, a new set of clean claims is attached hereto in view of the amendment included herein.

III. AMENDMENT

- (i) *Please cancel claims 9, 20, 33, 60 and 72 without prejudice or disclaimer.*
 - (ii) *Please amend the claims as follows:*
10. (Once Amended) An enzyme-linked probe for detecting, identifying or quantitating the presence of *Dekkera/Brettanomyces* yeast in a sample of interest, [The probe of claim 9,] wherein the probe comprises a probing nucleobase sequence wherein at least a portion of the probing nucleobase sequence is at least ninety percent homologous to the nucleobase sequences selected from the group